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:
PUBLIC BROADCASTING RATE PROCEEDINGS
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1111 20th Street, Northwest
Room 450
Washington, D.C.

Monday, June 5, 1978

The hearing in the above-entitled matter
commenced at 2:00 p.m.

BEFORE:

COMMISSIONER THOMAS C. BRENNAN, Chairman

COMMISSIONER DOUGLAS E. COULTER

COMMISSIONER MARY LOU BURG

COMMISSIONER CLARENCE L. JAMES, JR.

COMMISSIONER FRANCES GARCIA

ORIGINAL

PRESENT:

BERNARD KORMAN
I. FRED KOENIGSBERG

Counsel for ASCAP

ERIC SMITH
ALLEN LATMAN

Counsel for PBS

ALSO PRESENT:

ALBERT F. CIANCIMINO, SESAC

JEFFREY TELLIS, Intercollegiate Broadcasting Network

SHELDON E. STEINBACH, American Council on Education

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P R O C E E D I N G S

CHAIRMAN BRENNAN: The meeting will come to order. All parties with an interest in this proceeding were personally notified of this meeting. Because of the requirements of the Copyright Act, it was not possible to provide other public notice. In response to the request of Commissioner Garcia, we have received statements from ASCAP and the Public Broadcasting Service. And I direct that those statements be made part of the record of this proceeding.

This Commissioner has a few questions for both Mr. Korman and Mr. Smith as a result of those letters. And if Mr. Korman will indulge me, I will ask my questions of Mr. Korman first.

Mr. Korman, Mr. Smith in his letter on behalf of the Public Broadcasting Service makes the argument that PBS and NPR and the regional networks come for purposes of Section 118, only within Clause Two of Section 118d; and that, consequently, it would be beyond our jurisdiction to consider the revenues of those networks in establishing the ASCAP payment.

Your statement contain a partial discussion of that issue. But I think it would be helpful if you would amplify ASCAP's position on this issue.

MR. KORMAN: I'd be glad to, Mr. Chairman. I think, first, that under the Copyright Act, it is clear that any public television network is performing. And that

1 it is performing publicly, and therefore, would, if it's
2 performances were not authorized, be infringing to the
3 extent that it was performing copyrighted works. So, it
4 follows, I think, that either these networks may obtain
5 permission in the normal way, that is to say, outside the
6 scope of Section 118, or they may be within the scope of
7 Section 118 and entitled to the benefits of a compulsory
8 license.

9 In the House report there is reference, and we
10 quote it at the bottom of page three of our letter, dated
11 June 2, 1978, making clear that it is--let me quote from
12 the report. "It is the intent of the Committee that "Inter-
13 connection" activities serving as a technical adjunct to
14 such local stations transmissions, such as the use of
15 satellites or microwave equipment, be included within the
16 specified activities of Section 118d".

17 Now, those activities, as we show just above
18 on page three include the distribution of programs, include
19 the transmission, Mr. Chairman. And running through, as
20 we do in the letter, the meaning of these various terms,
21 it's clear that a transmission--that a performance may occur
22 in the course of the transmission, that a transmission is
23 indeed a blank performance itself.

24 I think that the public broadcasters are on the
25 horns of a dilemma. They either are in a position where they

1 must obtain permission outside the scope of Section 118
2 or have the benefit of the compulsory license provisions
3 of that section. It is, I think, possible, and in
4 Mr. Smith's letter he refers to double. It is possible
5 to conceive of a system where only a network would need
6 a performance license or where only the stations would.

7 It would depend on the terms of the license in
8 the case of a voluntary license, or perhaps it would depend
9 on what this Tribunal were to decide. The public broadcasters
10 say that it was Congress' intent that networks not be
11 licensed. I don't find any basis for that statement anywhere
12 with respect to the need to license networks for performances.

13 They say that Congress was clear that it did not
14 have any such thing in mind. In view of the fact that the
15 only analogy with which anyone was familiar with in the
16 commercial world where networks are licensed, it would seem
17 to me that the reasonable inference is that Congress did,
18 indeed, intend the public broadcasting networks to be
19 licensed. As a matter of fact, all of our preliminary
20 discussions at the time of the hearings, which were referred
21 to in the hearings, have dealt with licensing the networks,
22 and not licensing the stations at all.

23 CHAIRMAN BRENNAN: In those contacts of the
24 double payment there is reference to the CBS matter. Could
25 you enlighten us a little bit on that as to ASCAP's position?

1 MR. KORMAN: Well, could you cite that to me?
2 We just got that letter before the hearing, Mr. Chairman.
3 I think there they were talking about paying on a basis
4 other than use. Is that what you're referring to?

5 CHAIRMAN BRENNAN: Yes. On the bottom of page
6 seven, Mr. Korman. What brought that paragraph to mind
7 was your reference to the commercial practice. And it might
8 be well at this time if you also were to address yourself
9 to that issue.

10 MR. KORMAN: CBS has never argued in the CBS case,
11 or otherwise, that it does not require a license for its
12 performances. The argument with CBS has simply been the
13 manner in which the fee should be computed, with CBS arguing
14 that it should pay perhaps an overall administrative fee
15 and thereafter a fee based only the compositions actually
16 use. But it has never argued, as the public broadcasters
17 are arguing here, that because each of its affiliates has a
18 license to perform, therefore, the network as such does not
19 need a license to perform.

20 Now, CBS has always agreed that it does, at
21 least always since 1941 when networks were first licensed,
22 that it does require a license because its performance is
23 distinct and different, as the language in the reports that
24 we quote in our letter show, from the performance of the
25 individual stations. And quite obviously, I think it requires

1 no argument, a performance being heard by a nationwide
2 audience through the facilities of many affiliates is an
3 entirely different order of value than performance by a group
4 of individual local stations, which does not reach anything
5 like a national audience.

6 There's nothing in the CBS case, Mr. Chairman,
7 that supports the argument that the public broadcasters make,
8 nor did the commercial broadcasters, in their letter, say
9 anything more than they think they're paying too much for music.
10 Now, they cannot argue that they have in fact paid on the
11 basis of revenue, because they haven't. They would like to
12 get off on that basis because they would pay less--not quite
13 so vigorously as our friends here would like to pay less.

14 On the CBS case, so long as it has been raised,
15 Mr. Chairman, we asserted at the hearing at one point that
16 we were on route to the Supreme Court by way of a
17 petition. We have filed such a position, as has BMI. And it
18 occurs to me that perhaps the petition ought to be part of
19 this record, if the Tribunal so desires, just so that with
20 respect to the old notion of per use fees or per composition
21 fees, as the public broadcasters have called the same idea
22 here, the Tribunal may know what the issues are in the CBS
23 case.

24 CHAIRMAN BRENNAN: Is there any objection to
25 making the petition part of the record?

1 COMMISSIONER JAMES: Yes.

2 CHAIRMAN BRENNAN: Objection has been heard.

3 MR. KORMAN: In any event, the record will show that
4 such a petition has been filed and will be ruled on in
5 October, CBS having obtained an extension of time to file
6 its opposing brief to August 2.

7 CHAIRMAN BRENNAN: Now, turning to another subject,
8 Mr. Korman, I would like you to listen carefully to this
9 hypothetical package resolution of the PBS-NPR-ASCAP
10 issue, and then indicate to me all the negative aspects
11 that you find in it.

12 The Tribunal would affirm that revenue is an
13 appropriate basis for determining the compensation to be
14 paid to ASCAP, that a blanket license is the preferred
15 method, that in determining the initial payment, we would
16 use some variation of Commissioner Garcia's formula, that
17 that formula would be applied to the latest available
18 official figures as to Public Broadcasting revenue, that the
19 figure that results from that calculation would appear as a
20 lump sum yearly payment in our final rule. The formula,
21 as such, would not be part of the rule. The flat sum payment
22 would be subject to the inflation adjustment as of
23 January 1, 1981, and it would be provided that even though
24 this is a lump sum payment to be made by PBS and NPR, that
25 individual television and radio stations are fully subject

1 to the rate and the terms.

2 Now, I'm sure you will find many deficiencies
3 in that proposal, and would you enumerate those?

4 COMMISSIONER JAMES: One moment, Mr. Chairman, you
5 said this was Public Broadcasting's proposal?

6 CHAIRMAN BRENNAN: No, I made no such statement.

7 MR. KORMAN: This is a hypothetical.

8 CHAIRMAN BRENNAN: Hypothetical.

9 COMMISSIONER JAMES: Oh, okay, I'm sorry.

10 MR. KORMAN: I, before responding to
11 Mr. Chairman, may tell you that yesterday I attended by
12 son's commencement exercises and George Clemton was the
13 commencement speaker. And he spoke of his experience,
14 taking a degree at Cambridge University, where the practice
15 is that when studies for whatever the period of time is--in
16 this case it was two years--with no examinations.

17 At the end of the two-year period, one is
18 examined. Part of the examination is a question for which
19 you cannot prepare; it is a two-hour essay or a three-hour
20 essay question. And the theory at Cambridge University is
21 that anyone who has been there for two years ought to be
22 able to write an intelligent and incisive essay on any
23 subject for three hours.

24 He was asked, when he opened the examination
25 paper, to write an essay on somebody named Charles Fox. He

1 had no idea who Charles Fox was. He struggled for a while.
2 He was actually a minister at the time and supported the
3 colonies, so he said, and everyone really should have known
4 him. But he struggled for a while. And finally after a
5 half hour or so, he wrote for three hours on an imaginary
6 Charles Fox, who he said was a poor second basement for the
7 Chicago White Sox. He wound up getting his degree with
8 honors.

9 I shall, however, be more relevant in my response
10 to your hypothetical.

11 COMMISSIONER JAMES: Mr. Chairman, so I can under-
12 stand that response to the hypothetical, can the reporter
13 read the hypothetical again, or can you give it again?

14 CHAIRMAN BRENNAN: I think it might be quicker
15 if I mentioned it. And if I don't use exactly the same
16 verbage, Commissioner, it's not intended to suggest a
17 change, but just the Chairman doesn't have total recall.

18 The Tribunal would affirm that revenue is an
19 appropriate basis for determining compensation to ASCAP.
20 We would affirm that the blanket license is the preferred
21 method. We would generally accept Commissioner Garcia's
22 formula. We would apply that formula to the latest
23 official information as to the revenues of the Public
24 Broadcasting System and NPR. That the sum that is produced
25 by the application of the Commissioner's formula to the

1 report of the revenues would be fixed as a flat sum in
2 our rule. The formula as such would not appear as part
3 of the rule, but would, of course, be discussed in the
4 comments. That that sum would remain in force until the
5 period set on January 1, 1983 for the new rate to apply,
6 subject only to the inflation adjustment, which goes into
7 effect on January 1, 1981.

8 I think I have restated the hypothetical as
9 originally presented. And also I think in the process
10 the Commissioner is giving Mr. Korman to further reflect.

11 MR. KORMAN: By "official" figures, Mr. Chairman,
12 I take it you mean something other than what was suggested
13 by Commissioner Garcia originally. All figures for
14 Public Broadcasting, I suppose, are official. Now, are you
15 referring to certified in some way or audited figures?

16 CHAIRMAN BRENNAN: It's our understanding that
17 1976 figures are the latest available. Is that correct,
18 Mr. Smith?

19 MR. SMITH: There are some preliminary '77 figures
20 available. But at this point in time, they aren't certified
21 until September '79--FY'77. No, I'm sorry, that's incorrect.
22 I was thinking of FY'78. '77 figures are available and
23 were certified last September.

24 CHAIRMAN BRENNAN: Then we would use whatever the
25 latest figures are, Mr. Korman.

1 MR. KORMAN: So, there was no change then from
2 Commissioner Garcia's proposal in terms of whether they are
3 official or not. They are figures for the fiscal year
4 ending September 30, 1970 that would be used for the basis
5 for the -- I'm sorry -- 1977 that would be used as the
6 basis for the 1978 fee. Is that correct?

7 CHAIRMAN BRENNAN: As the basis for the entire--

8 MR. KORMAN: For the entire period?

9 CHAIRMAN BRENNAN: Yes.

10 MR. KORMAN: It seems clear that we are dealing
11 here with an industry that is growing rapidly. It is my
12 understanding that the growth between 1976 and 1977 was in the
13 order of 15 percent. And if you're talking about a
14 five-year contract, five-year term rather, where there is
15 going to be anything like that rate of growth, then it would
16 be a gutting, I think, of Commissioner Garcia's proposal
17 to take a single year in the beginning and freeze the
18 figure, except for an adjustment which is minor in this
19 context for the inflation which would be made only once and
20 then in 1981.

21 I frankly wouldn't care if it were made each
22 year, I would object strenuously to it because if this
23 Tribunal is to be true to the decision that it made at the
24 last hearing, that is to base the reasonable fee on revenues,
25 then it cannot take one year and say: those are the fees,

1 and I realize this is what the public broadcasters are
2 proposing, should be it for the whole five-year period.
3 There either is or is not, I suggest, a logic to using
4 revenue as a base for the fee. Clearly, experience
5 shows that there is logic because it's what's done in the
6 commercial world, and it's what's done in other countries.

7 It is not a new notion that we put before you
8 because it is your first problem and we hope to catch you
9 unaware, it's quite the contrary. What we are doing is
10 proposing the common usual, ordinary, customary way of
11 doing it. And I can see no reason to start with a lump sum
12 and adjust merely for inflation and think that that does the
13 job.

14 CHAIRMAN BRENNAN: Your answer does not come as
15 a surprise, Mr. Korman. You gave me the answer that I
16 anticipated.

17 ASCAP, earlier in these proceedings, has asked us
18 to consider one aspect, in particular of the SESAC
19 voluntary agreement, namely, the amount of the payment.
20 If I misstate the terms of the SESAC agreement, I am sure
21 I will be promptly corrected. But my recollection is
22 that in that agreement there is a payment of \$50,000 which
23 remains constant throughout the life of the agreement, with
24 not even the mechanism for inflation adjustment. Is that
25 correct?

1 MR. KORMAN: That's correct, Mr. Chairman.

2 There is a mechanism for adjustment, but not for inflation.
3 And let me say a word or two about the SESAC agreement on
4 the same condition as you do, that Mr. Ciancimino will
5 correct me if I'm wrong. SESAC is an enterprise whose
6 gross income is in the order of three to four million dollars
7 a year.

8 In terms of its judgement as to what fee is
9 likely or would have been likely to come out of these
10 proceedings had it participated, had it been in effect living
11 in here, it seems to me very clear that the amounts would have
12 been in excess of the \$50,000 that was agreed on, and in
13 excess of anything they could reasonably have expected to
14 receive.

15 SESAC, in my judgement, used excellent used
16 excellent business judgement by making an agreement at
17 \$50,000 a year and sparing themselves the expense, other
18 than the occasional trips Mr. Ciancimino has had to make
19 here, of participating and getting an expert economic
20 witness, and perhaps outside counsel geared up to present
21 its case.

22 Moreover, SESAC knew because we had engaged in
23 joint negotiations with the public broadcasters what BMI
24 also knew, namely, that it was quite likely that ASCAP
25 would be here to do battle rather than to accept the terms

1 that Public Broadcasting had been offering. So that the
2 SESAC \$50,000 agreement, I think we said this in our
3 statement, if you relate that number to SESAC's share of
4 the total performing rights collections, ASCAP and
5 BMI have about 160 million. And you make some projections
6 as to what ASCAP and BMI are likely to come out of here, I
7 think that SESAC did well. And I think, as a matter of
8 fact, whether we call it a bonus or a premium, SESAC
9 probably was given something a little extra in the minds
10 public broadcasters to reach the agreement that was reached
11 so that it could be used in the fashion that it was used
12 here, to try to keep down the price that would be paid
13 where ASCAP is concerned.

14 My counsel reminds me that--Mr. Koenigsberg for
15 the record--that the SESAC agreement, of course, is based
16 on revenues as SESAC has testified. And is, to that degree,
17 based on their commercial rates to that degree a close
18 analogy from what we have--based on the commercial
19 rates. I misspoke, Mr. Chairman.

20 CHAIRMAN BRENNAN: I'll give you a chance to
21 rest, Mr. Korman. I have a few questions for Mr. Smith.
22 Mr. Smith, as a prelude to the first question, let me
23 read a sentence from the BMI-Public Broadcasting-NPR license
24 agreement. "Broadcast Music, Inc.(BMI) hereby grants to
25 the Public Broadcasting Service (PBS) and its public

1 television station, PBS stations, and to National Public
2 Radio, Inc., (NPR) and its public radio station--"et cetera,
3 et cetera. If it's the position of the Public Broadcasting
4 Service and NPR that the networks are not subject to the
5 Copyright Act, why does this agreement purport to confer
6 a license on PBS and NPR?

7 MR. SMITH: That is a very good question and a
8 very difficult one to answer. It's really historical I
9 think. The first arrangement we made was with SESAC. And
10 SESAC licenses both performing and recording rights.

11 CHAIRMAN BRENNAN: That's why I made reference.

12 MR. SMITH: I understand that. When we moved
13 from the SESAC agreement, which was concluded before the
14 BMI agreement and indeed the Harry Fox agreement, and this does
15 not get to the substance of your question. But in terms
16 of how we looked at it, we simply took the opening words--
17 I mean, this is how it practically worked--of the SESAC
18 arrangements. However those words were created at the
19 time, I can't remember.

20 Now, as to the substantive question, I have
21 always believed, and I know Mr. Aleinikoff has always
22 believed and through the congressional hearings and everything,
23 that PBS would not be licensed for performing rights. And
24 we can get into that. I mean, this is a prelude, I think
25 I'd like to speak on that issue as well.

1 CHAIRMAN BRENNAN: Sure.

2 MR. SMITH: I think that's always been our position,
3 that we do not publicly perform, as simply a technical
4 adjunct, as the report says, to others' performance as a
5 way of getting them the program. Mr. Latman also tells me
6 that there are things in the BMI agreement, such as audio-
7 visual and things like that, that might also be a justifi-
8 cation, including PBS in that arrangement.

9 CHAIRMAN BRENNAN: Yes, but your general statement
10 indicates that you compare BMI to ASCAP, and you indicate
11 that they both only deal with performance rights. And we
12 have other clauses which present us the same difficulty.
13 For example, there is language which I'm sure originated
14 with PBS in which BMI is required to indemnify the two
15 networks. And again, we have the same logical question as
16 to why that provision was included if the networks are not
17 performing.

18 MR. SMITH: Since PBS and NPR, the entities,
19 they are going to be making these payments on behalf of
20 all their membership. We're a membership organization;
21 our stockholders are the stations that are within NPR and
22 PBS. PBS had to be in that agreement. In fact, we are the
23 party with whom BMI is contracting, PBS and NPR, and all
24 its stations. It could have been drafted in such a way as
25 to separate out PBS for direct liability for performance.

1 It was never our view--and I can say that quite
2 clearly--it was never our view that PBS was a performing
3 organization. But we had to be, as the party who signed
4 that agreement, somehow licensed on behalf of our stations.

5 CHAIRMAN BRENNAN: I think it greatly weakens your
6 argument that the networks are not performing. Let me ask
7 you one or two final questions, Mr. Smith. This reference
8 to \$700,000 being a reasonable payment, that of course
9 was calculated on the assumption that the networks are not
10 performing. So, therefore, if this body determined that
11 the networks are performing, we would have to provide an
12 increase in that figure. Would we not?

13 MR. SMITH: That is correct. I think the total
14 additional income for the network, which is non-duplicative,
15 is something in the order of 18 million, 19 million, except
16 for NPR, that's for television.

17 CHAIRMAN BRENNAN: Thank you.

18 MR. KORMAN: Mr. Chairman.

19 CHAIRMAN BRENNAN: Mr. Korman.

20 MR. KORMAN: If I may just make one other point
21 in connection with the question you raised concerning
22 SESAC--. Since SESAC's normal rates are based on wattage and
23 population, wattage does not change through time and
24 population changes only very slowly.

25 So that if, in effect, they were satisfied with the

1 \$50,000 at the beginning on the basis of wattage and
2 population, there's no reason for them to be concerned,
3 as there is reason for anyone licensing on a revenue basis
4 to be concerned about changes during the five-year period.
5 I think that's the answer I should have given at first.

6 MR. SMITH: Mr. Chairman, may I have an opportunity
7 at some point during this to respond also to the questions
8 you asked Mr. Korman?

9 CHAIRMAN BRENNAN: Yes, please do now while it's
10 fresh in our minds--if you wish.

11 MR. SMITH: I think it's clear from the basis of
12 the report language on Section 106 that a broadcasting
13 network, as discussed in that language, is a performing
14 entity. A broadcast network by contract with our affiliates,
15 and it's very hard to get at this, require stations to
16 perform those programs. In our case, we could deliver
17 5,000 hours of programming a year to our stations. And they
18 could, if they desire to, broadcast 50 percent of them, 75
19 percent of them, 20 percent of them.

20 We operate not as a net work, and that's why the
21 word "interconnection" is put into the report. And we
22 insisted on that to make absolutely clear that the activities
23 that we do in recording and distributing programs to our
24 stations would be covered under Clause Two at least. And I
25 don't think that language that talks about interconnection

1 has the force and effect that Mr. Korman suggests it does.
2 We think that it applies only to the recording rights
3 functions, distribution functions, not to the functions in
4 Clause One.

5 The other point I think is while that House
6 language definition that networks perform, we have a very
7 serious questions as to whether, in fact, we, Public
8 Broadcasting Service or NPR perform publicly. Our programs
9 do not go out to people; they go out purely to stations.
10 If we sent them out by mail, for example, as we used to do
11 prior to 1970, when many of the programs were network we
12 didn't have any interconnection--they went out by mail to
13 stations. It's simply a facilitation device to get programs
14 performed by stations. And I don't see that we are--even
15 though under that definition, assuming we were like a
16 commercial network, we certainly would be performing. I
17 think the language is clear there.

18 Secondly, I don't think it's public performance.
19 And thirdly, Section 118 talks about performer display by
20 stations, not by PBS or NPR or a network. It says: by or
21 in the course of the transmission by a station.

22 MR. LATMAN: May I add something?

23 CHAIRMAN BRENNAN: Yes, Mr. Latman.

24 MR. LATMAN: Thank you. Picking right up from
25 that last point--Section 118d does divide the activities, as

1 we all know, into three very distinct activities. Broad-
2 cast stations is one, producers and distributors of programs
3 is two, schools and related institutions are three. The
4 key question in this part of the proceeding, would seem to
5 me, is not whether PBS and NPR perform, but whether they
6 perform in the course of the transmission made by a non-
7 commercial, educational broadcast station. They are not, I
8 think we'll all agree, a non-commercial, educational
9 broadcast station.

10 In fact, ASCAP's letter says PBS and NPR and
11 regional networks engage in activities described in
12 Clause Two. We agree. We think they are a Clause Two
13 entity. The examples that Mr. Smith gave only emphasize it.
14 For example, NPR still does mail out programs.

15 Now, in mailing out the programs, they are not
16 performing in the course of the transmission by a station.
17 Putting it another way: if NPR performs and transmits from
18 Washington to WMYC, that's its performance. If WMYC in the
19 Municipal Building of New York City I believe transmits
20 to me that my office at NYU, that is its transmission which
21 is covered by Clause One.

22 So, I think the question is not whether they
23 perform or not, and not even necessarily whether they
24 perform publicly or not, but whether they perform in the
25 course of a transmission by a station. And I have yet to

1 read or hear anything that indicates that the network or
2 the Interconnection can do something that a station does.
3 Clause One is the station.

4 The transmissions that are talked about throughout
5 Section 118 are the transmissions by stations. For example,
6 the seven-day rule. The seven-day rule is measured from the
7 transmission by a station--not the performance or the
8 transmission by Interconnection to a station.

9 Now, I had understood--and I would like to ask
10 Mr. Ciancimino if he would want to respond that, for
11 example, even in the commercial world the treatment of
12 networks is quite different than the treatment of stations.
13 I think we all know that. I have heard that SESAC does
14 not license stations--I mean networks--I'm sorry. But I
15 don't represent that that is so.

16 And similarly, ASCAP, which I'm sure would always
17 like to compare the PBS, NPR, the regional networks, the
18 commercial networks, treat them quite differently. And the
19 most important part of the whole story is--and I'm taking
20 more time than expected--is that not only does PBS and NPR
21 perform different functions from commercial networks, I
22 think we all agree to that, but more importantly, Section
23 118 is the key, not the definition of performance, but
24 118d. And just to sum it up, PBS, NPR and the regional
25 networks do not perform in the course of a transmission by

1 a station. Thank you, Mr. Chairman.

2 MR. KORMAN: Mr. Chairman, may I respond.

3 CHAIRMAN BRENNAN: Yes, in a second, Mr. Korman.

4 And then I have to recognize my distinguished colleague who
5 is seeking recognition.

6 Mr. Korman, I have in front of me a document
7 which has been circulated to the Commissioners quite recently,
8 which is a working draft of a proposed final rule, which
9 reflects actions taken up to this point. And I'm reading
10 from the table of contents, Section 304.3, "performances of
11 ASCAP musical compositions by PBS and NPR and their
12 stations."

13 Now, since this language is similar to what
14 PBS and NPR accepted in the BMI contract, would there be
15 objection to our implying the same terminology in our rule?

16 MR. ZELENKO: You mean that question for
17 Mr. Latman I gather.

18 CHAIRMAN BRENNAN: Mr. Latman, yes. I'm sorry.

19 MR. LATMAN: I will say for myself before
20 confirming this, it's very hard to respond to that in
21 isolation, certainly very hard to respond to that in
22 isolation. We have no question, as I've said before, that
23 PBS and NPR are Public Broadcasting entities and of course
24 you pay--they are covered under this section as they pay.
25 The question is who they should pay. And I don't know if

1 that language--I would say in isolation, I can't respond.
2 Maybe Mr. Smith can do better.

3 MR. SMITH: The activities that are engaged in
4 by PBS and NPR and the regional networks that are covered
5 under Section 118 or the activities specified in Clause Two,
6 we have arrangements with the Harry Fox Agency. We paid
7 for those activities--not by separate and PBS pays part
8 and producers pay another part or stations pay a third part.
9 It's a blanket deal that covers all the activities. So, in
10 that regard, we are paying for music use.

11 Again, I'd have to say the same things Mr. Latman
12 said, I'd have to know some more about where that's going.
13 Before we know that, we will know that obviously, we still
14 believe that PBS and NPR have no independent obligation to
15 a performing rights society to pay for their own performances.

16 CHAIRMAN BRENNAN: Did you say the amount of
17 money involved here was 19 million dollars; was that the
18 figure that you mentioned?

19 MR. SMITH: I spent an awful long time on
20 Friday and this morning and over the weekend trying to get
21 from the corporation and from our own records exactly the
22 non-duplicative revenue of the regional networks and PBS
23 and NPR. In the case of the regional networks, it's about
24 \$200,000. In our case, we would include the Interconnection
25 costs about--this is a rough estimate because it's hard to

1 pull out of the reports because it's not recorded this way--
2 about 18 million. And I believe that for NPR the number that
3 we estimated was in the neighborhood of six million. So,
4 plus or minus, a very rough calculation, 25 million at the
5 most.

6 CHAIRMAN BRENNAN: Thank you, counsel. We shall
7 recess for five minutes.

8 (Whereupon, a short recess was taken.)

9 CHAIRMAN BRENNAN: The meeting will resume.
10 Mr. Korman.

11 MR. KORMAN: Very quickly, Mr. Chairman. Networks
12 transmit by stations. And it's the same in the public world
13 and in the commercial world. When Mr. Smith says that
14 there's some doubt as to whether the performances by PBS
15 and NPR are public, it must bring to Mr. Latman's mind, as
16 a teacher of copyright law, it certainly brings to my mind,
17 the arguments made in the early days of radio by the radio
18 stations, seeking to avoid liability on the very ground that
19 their performances, they said, were not public. Why were
20 they not public? Because in one case, they occurred in the
21 privacy of the station's studio, and another case, because
22 they were heard only in private homes.

23 Now, the courts, early on in the twenties and
24 throughout, those arguments, and it is passing strange to
25 hear them advanced by public broadcasters in 1978.

1 CHAIRMAN BRENNAN: I think we have sufficiently
2 ventilated that issue. Commissioner Garcia.

3 MR. KORMAN: One last point.

4 CHAIRMAN BRENNAN: Commissioner Garcia.

5 MR. KORMAN: So that the record be clear on this,
6 with reference to the commercial networks, agreements
7 requiring affiliates to take the networks' programs is
8 incorrect. Such a provision would violate the Antitrust
9 laws. Every affiliate has the option to reject any network,
10 just as the Public Broadcasting stations may reject PBS
11 program. I'm sorry.

12 CHAIRMAN BRENNAN: Commissioner Garcia.

13 COMMISSIONER GARCIA: Mr. Chairman, Commissioners,
14 at the May 31st meeting, a consensus was reached by this
15 Tribunal to adopt the revenue method in principle for
16 determining the liability due to ASCAP by Public Broadcasting.

17 Both ASCAP and Public Broadcasting were asked to
18 submit their views and suggested language to the Tribunal
19 by Friday, June 2. Both parties complied with this request.
20 And on behalf of the Tribunal, I would like to thank ASCAP
21 and PBS for their response. Both parties have given
22 verbal input.

23 As a result of this constructive information, I
24 have rethought my original formula and have adopted some of
25 suggestions submitted by both parties. This should make

1 them both happy. Mr. Chairman, I am prepared to make
2 recommendations to this Tribunal for their consideration.

3 First, the validity of the revenue method. PBS
4 still argues that revenue is not a good source to value
5 music. I say it is a reasonable measure of music worth, if
6 for no other reason than that the revenue measure of music
7 has been a negotiated arm's length transaction in commercial
8 broadcasting, thus establishing its precedent in the market
9 place.

10 The second area is that of definition. Again, it
11 has just been discussed by both parties, there are still some
12 question as to what entities fall under Section 118. For
13 purposes of this discussion and until this question can be
14 solved, I propose that this Tribunal adopt the term
15 "perform and Public Broadcasting entity"; thus, using the
16 two terms defined by the statute and explained in the House
17 and Senate report--"perform and public broadcasting entity".

18 The question of which revenue should be included
19 in the computations has been one of much discussion. I
20 propose that all revenue and support receipt, regardless of
21 the source, should be included. That includes in kind,
22 indirect, et cetera. I further recommend that revenue be
23 defined as gross increases in the excess or gross decreases
24 in liability or a combination of both derived from
25 delivering or producing goods, rendering services or other

1 earning activities of an organization during a period.

2 For example, dues, sales of services, ticket sales, fees,
3 interest, dividends and rent.

4 Support should be defined as the conveyance of
5 property from one person or organization to another
6 without consideration. For example, donations, gifts, grants
7 or bequests. Both revenue and support, as justifying are
8 referred to as revenue for purposes of this discussion.

9 While I appreciate the various arguments offered
10 by PBS as to why only monetary income should be included,
11 it is the opinion of this Commissioner that such are not
12 valid arguments. I will go into more detail on this subject
13 later.

14 Commissioner Coulter has expressed concern as to
15 the complexity of the original proposed formula. He felt
16 there were too many steps in the original revenue formula,
17 and that this would lead to confusion. In an effort to
18 accomodate the Commissioner's concern, I have eliminated the
19 standard deduction of 25 percent of gross revenue for
20 television, and have instead reduced the rate by the same
21 amount. Thus, making the effective rate .3 percent; thus,
22 a one-step formula.

23 Ironically, the .3 percent is the same figure
24 that Commissioner Coulter used for his base at the previous
25 meeting. PBS raised some valid points regarding the rate

1 charged to radio, to their radio members, as opposed to
2 rates which were adopted by this Tribunal for non-affiliated
3 stations. They also suggested that the standard deduction
4 for radio should be 50 percent in order to equitably
5 separate the uniqueness of public radio.

6 They have also made reference to the data which
7 I stated in my presentation on May 31st that I used to
8 determine these percentages. I would like to point now,
9 that it was never my intention to indicate that these were
10 precise percentages. I had no intention of making the
11 deduction a dollar for dollar deduction.

12 The example of indirect, in kind, et cetera were
13 given merely to illustrate that there are items which are
14 sometimes unique. I do believe, however, that PBS did have
15 a valid point in mentioning that the Tribunal may have
16 discriminated against their membership; and therefore,
17 perhaps discouraged potential members to join.

18 This, of course, is not the intention of this
19 Tribunal. SESAC has also expressed some concern with the
20 decision regarding unaffiliated and college radio stations.
21 The reconsideration of tis previous motion will be discussed
22 later. I do feel, or I should say I do not feel that the
23 uniqueness of public radio is an additional 50 percent
24 deduction. I do agree that it's more than ten percent.
25 Therefore, based on the original formula, my recommendation

1 is that the standard deduction for radio be increased to
2 33-1/3 percent. Again, in attempting to keep the formula
3 simple, as requested by Commissioner Coulter, and to be
4 consistent with the elimination of the standard deductions
5 in television, I have reduced the rate for public radio from
6 .6 percent to .4 percent.

7 The new proposed rates that I am now recommending
8 are .3 for television and .4 for radio, to be applied to
9 to revenue as previously defined. Now, back to the all
10 inclusive revenue recommendation.

11 This Commissioner has attempted to take into
12 account the PBS concerns by granting only 36 percent of the
13 percentage requested by ASCAP for television; and 33 percent
14 of the percentage requested by ASCAP for radio. If we
15 were to consider monetary income only and base formula,
16 that would certainly not be fair and equitable to the
17 ASCAP members. In addition, it will lead to discrepancies
18 in the reporting of such funds.

19 Also, if such an approach were adopted, then this
20 Commissioner would have to recommend that the percentage
21 rates should be equal to the effected rate for commercial
22 television and radio. Also, one more point of interest,
23 from the information that I have available, this approach
24 would lead to a higher liability to PBS. However, that is
25 not why I am so strongly against it.

1 I am opposed to it because of the potential
2 problems that it could create. In further consideration to
3 PBS, I am recommending that the payment schedule be on
4 July 31st and December 31st of each calendar year, based on
5 the previous fiscal year revenue.

6 PBS has stated that their stations are in a fiscal
7 year of July to June. Thus, this gives them 12 months to
8 report their revenue and make payments -- a year of interest
9 free money, and also a year after they have had the benefit.
10 The above change is made because of the difficulties
11 encountered by non-profit organizations in valuing non-
12 monetary income.

13 To allow or permit Public Broadcasting anymore
14 time would not be fair to ASCAP members, as their money
15 is being used interest free by Public Broadcasting. Also,
16 by allowing the final distribution to be December 31st
17 instead of July 31st, this will allow Public Broadcasting
18 an opportunity to have the final number as certified to the
19 Treasury available, and therefore, make any necessary
20 adjustment to the final payment.

21 The first payment is to be due on December 31, 1978
22 based on the gross revenue as certified to the U.S. Treasury
23 for the fiscal year ending 1977. Thereafter, all payments
24 are to be made in two equal payments. As pointed out by
25 ASCAP, the amount or originally proposed of 50 percent should

1 be 56.4 percent as of June 6th. It is my recommendation that
2 this schedule shall go into effect June 8th; therefore, I
3 have used that date, rounded to the nearest percent, thus,
4 the first payment due on December 31, 1978 shall be 56 percent
5 of the annual fee.

6 Public Broadcasting has made an argument that
7 there is no need for any rate to be applied to individual
8 stations; and that they, alone, are in the position to
9 judge overall fairness of their members. It is my proposal
10 that each entity may destinate a reporting and paying agent
11 to ASCAP. Public Broadcasting can make the entire payment
12 for their member. However, a report indicating each
13 entity's call letter and FCC license, if any, name, if any,
14 address and gross revenue and the prorated fee shall be
15 included with each payment.

16 This will assist ASCAP in distributing these funds
17 to their members and will also comply with the law. The
18 listing with the July 31st payment would include the
19 preliminary number if the adjusted numbers are not available.
20 However, the December 31 listing should reflect the budget
21 as included in the total certified to the Treasury.

22 Public Broadcasting submitted in their comments
23 that certain instructional close circuit televisions do not
24 come under Section 118, and therefore, should not be
25 included in the base of the revenue formula. It is not the

1 intention of this Tribunal to go beyond its jurisdiction
2 in assessing royalty fees. The fact that those amounts
3 qualify for matching revenue funds, they should not be
4 confused with those amounts which are subject to royalty
5 fees.

6 The procedure which I am proposing is a very simple
7 one. Only the non-duplicative revenue of those entities which
8 are covered by Section 118, after we determine what those
9 are, are to be included in the formula. I appreciate that
10 there is some disagreement among each of the parties as to
11 which performing public entity should be assessed royalty
12 fees. That is further support as to why PBS should submit
13 to ASCAP with their payment a detailed listing of all the
14 entities included in the computation and the budget of those
15 entities.

16 In summary, the highlights of my proposal are:
17 (1) that the all inclusive revenue method be adopted to
18 compute the fee due ASCAP from Public Broadcasting, (2)
19 revenue is defined as revenues received from all sources,
20 both monetary and non-monetary, with no deductions whatsoever,
21 (3) the rates to be applied to this revenue are .3 for
22 public television, .4 for radio until December 31, 1982.
23 Payments are to be made in two equal payments each calendar
24 year on July 31st and December 31st, based on the previous
25 fiscal year revenue as defined. First payment will be made

1 December 31, 1978 and will be 56 percent of the annual fee.

2 Mr. Chairman, at this time I make the following
3 motion: all revenue shall be included in the base for the
4 computation of the royalty fee due ASCAP. Revenue shall be
5 defined as revenue received from all sources, both monetary
6 and non-monetary, with no deductions whatsoever. The rate
7 to be applied to the gross revenue shall be .3 percent for
8 television and .4 percent for radio until December 31, 1982.

9 Payment to be made in two equal payments on
10 July 31st and December 31st of each calendar year, based on
11 the previous fiscal year gross income, provided, however, that
12 payment of fees for uses in 1978 subsequent to the effective
13 date of this schedule need not be made until December 31,
14 1978, and will be 56 percent of the total fees due.

15 CHAIRMAN BRENNAN: The Commissioner has given the
16 Chair a document which contains these four points.

17 COMMISSIONER GARCIA: Correct.

18 CHAIRMAN BRENNAN: I take it that that is the
19 full text of the motion?

20 COMMISSIONER GARCIA: Correct.

21 CHAIRMAN BRENNAN: Is there any discussion?
22 Commissioner Burg?

23 COMMISSIONER BURG: Commissioner Garcia, have you
24 come up with what indeed the dollar figures would be for
25 the revenue base in 1976 and 1977?

1 COMMISSIONER GARCIA: Based on the preliminary
2 numbers of the 412 million, the fee for 1976 would be
3 approximately 1.224.

4 COMMISSIONER BURG: Have you gone further for
5 another year?

6 COMMISSIONER GARCIA: We do not have the 1977
7 preliminary number available to us.

8 COMMISSIONER BURG: You mentioned that
9 Commissioner Coulter-- .3 percent, you never really
10 official submitted that proposal. Did you?

11 COMMISSIONER COULTER: No, I didn't.

12 COMMISSIONER BURG: I have no other questions
13 right now.

14 CHAIRMAN BRENNAN: What is the pleasure of
15 Commissioners?

16 (No verbal response.)

17 CHAIRMAN BRENNAN: The Chair would express the
18 view that the first issue to be resolved is whether or not
19 the Commissioner's motion is in a form which will allow us
20 to act on the subject. Do Commissioners have any views on
21 that matter? Commissioner Coulter?

22 COMMISSIONER COULTER: May I request your opinion
23 on that?

24 COMMISSIONER BURG: I have an opinion too--

25 CHAIRMAN BRENNAN: Commissioner Burg.

1 COMMISSIONER BURG: I think it ought to be
2 broken down, number one, into sub parts.

3 CHAIRMAN BRENNAN: Speaking not as the Chair, but
4 as an individual Commissioner, I agree with Commissioner
5 Burg. I think, Commissioner, we really need a little bit more
6 than what we have in front of us in terms of seeing to the
7 vote.

8 COMMISSIONER GARCIA: What is it, Mr. Chairman?

9 CHAIRMAN BRENNAN: I would think we would need
10 something similar to the attachment of the ASCAP letter.

11 COMMISSIONER GARCIA: Mr. Chairman, I appreciate
12 what you're saying. However, it was my intention that
13 the meeting today was to discuss the revenue formula and
14 the particular issues that were unsettled at the last
15 meeting. Now, if you're suggesting that I have final
16 language for you, then it was my intention that this would
17 take place tomorrow in connection with the other decisions
18 that we have also made in just voting the pertinent points
19 and not getting down to the final language. I stand
20 corrected if that's not your intention.

21 CHAIRMAN BRENNAN: Perhaps what we could do would
22 be if you could frame a few issues for our consideration
23 that we could resolve in principle or informally, and then
24 act tomorrow on official language.

25 COMMISSIONER GARCIA: Mr. Chairman, the four

1 points that I am asking you to adopt for the basis of the
2 revenue formula for ASCAP is one, and that is the all
3 inclusive revenue formula, which means that both non-monetary
4 monetary income would be included, that the rates applicable
5 to the all inclusive revenue formula would be .3 for
6 television and .4 for radio.

7 The third point would be the way in which these
8 payments would be made. Two equal payments are to be
9 made on July 31st and December 31st.

10 CHAIRMAN BRENNAN: What is the pleasure of
11 Commissioners?

12 COMMISSIONER JAMES: Let's vote.

13 COMMISSIONER COULTER: I would go along with
14 your definition of revenue.

15 CHAIRMAN BRENNAN: Yes, I think the best way to
16 proceed would be to try to break down into a series of
17 individual issues and we could possibly resolve those in
18 principle, and then act tomorrow on formal language.

19 COMMISSIONER GARCIA: Very good.

20 CHAIRMAN BRENNAN: Is there any further discussion
21 on the Commissioner's motion?

22 (No verbal response.)

23 CHAIRMAN BRENNAN: The Chair interprets the
24 pending motion as to approve in principle the revenue
25 formula which has been proposed by Commissioner Garcia.

1 COMMISSIONER GARCIA: Correct.

2 CHAIRMAN BRENNAN: Does the Commissioners motion
3 preclude the possibility subsequently of our deciding to
4 apply this to the initial year, subject to the
5 inflation adjustment?

6 COMMISSIONER GARCIA: Yes.

7 CHAIRMAN BRENNAN: Commissioner Coulter?

8 COMMISSIONER COULTER: You say does it preclude
9 that?

10 COMMISSIONER GARCIA: The motion that I have on
11 the floor is independent of any further considerations
12 that the Commissioners would like to make.

13 COMMISSIONER COULTER: So, if I'm correct, it
14 would not preclude doing what the Chairman suggested?

15 COMMISSIONER JAMES: She said it would.

16 COMMISSIONER BURG: It would.

17 CHAIRMAN BRENNAN: Perhaps we could informally
18 turn this around and decide whether there is, in fact, any
19 interest?

20 COMMISSIONER JAMES: I have none.

21 CHAIRMAN BRENNAN: You have none. Commissioner
22 Coulter?

23 COMMISSIONER COULTER: In having this applied to
24 the first year, and then be frozen in--yes.

25 CHAIRMAN BRENNAN: The Chair has an interest.

1 COMMISSIONER JAMES: I'm again getting confused
2 on the procedure. Are you asking us to rule on a motion
3 that you're offering now, as an amendment to--

4 CHAIRMAN BRENNAN: No, the pending motion,
5 Commissioner is Commissioner Garcia's motion to adopt her
6 revenue formula subject to the final language being
7 ratified later in the week. As part of the discussion of
8 that motion, I am inquiring if there is any interest among
9 Commissioners in having this formula apply for the deter-
10 mination of the initial payment, and then have that rate
11 frozen until 1983.

12 COMMISSIONER JAMES: Going back to your hypothe-
13 tical?

14 CHAIRMAN BRENNAN: Yes.

15 COMMISSIONER JAMES: Why don't we take a vote
16 on your hypothetical?

17 CHAIRMAN BRENNAN: That's what I'm trying to do
18 informally.

19 COMMISSIONER JAMES: Oh, okay.

20 COMMISSIONER BURG: I'm definitely against,
21 completely and strongly against revenue formula period.
22 But I'm also interested in the dollar figure. And if
23 your hypothetical gets that figure down lower than this
24 proposal, I have an interest.

25 CHAIRMAN BRENNAN: Commissioner, could we

1 proceed on this basis, that we would vote now on your
2 motion subject to reserving my right or the right of another
3 Commissioner to subsequently move to have this modified as
4 I previously indicated?

5 COMMISSIONER JAMES: Mr. Chairman, you've always
6 had that right, you always have the right to reconsider.

7 CHAIRMAN BRENNAN: If there is no further
8 discussion we shall proceed then to the vote on the
9 motion of Commissioner Garcia. In accordance with
10 temporary rules, we shall a recorded vote. The vote "yea"
11 obviously is a vote to approve the Commissioner's proposal;
12 vote "nay" is the converse. Commissioner Coulter?

13 COMMISSIONER COULTER: Yes.

14 CHAIRMAN BRENNAN: Commissioner Burg?

15 COMMISSIONER BURG: No.

16 CHAIRMAN BRENNAN: Commissioner James?

17 COMMISSIONER JAMES: Yes.

18 CHAIRMAN BRENNAN: Commissioner Garcia?

19 COMMISSIONER GARCIA: Yes.

20 CHAIRMAN BRENNAN: The Chairman votes "yes". The
21 vote is four "yeas" one "nay".

22 In order to get an indication of the sentiment
23 of the Commissioners, I will move that we apply Commissioner
24 Garcia's formula which we have just adopted in principle,
25 ascertain the total payment by applying that formula to

1 the latest available PBS figures, fix that payment in the
2 final rule, subject to the inflation adjustment. Is there
3 any discussion on the motion?

4 (No verbal response.)

5 CHAIRMAN BRENNAN: If not, we will proceed to the
6 vote. Commissioner Coulter?

7 COMMISSIONER COULTER: Yes.

8 COMMISSIONER JAMES: What are you doing now?
9 Will the Chairman please explain for this Commissioner what
10 the procedure is now, because I somewhat agree with
11 Commissioner Burg. We have voted on a revenue. We took
12 a straw vote. Now, are you asking that we now attempt to
13 amend her original motion subsequent to the vote being
14 taken? It's past.

15 CHAIRMAN BRENNAN: Yes. What I'm doing is
16 suggesting, Commissioner, that we--

17 COMMISSIONER JAMES: You said an amendment to
18 the--

19 CHAIRMAN BRENNAN: Yes, but we agreed that we
20 would adopt this proposal. And what I am doing now is
21 proposing that it be further redefined in the fashion I
22 indicated. And I offer that as an amendment to what
23 we have previously adopted.

24 COMMISSIONER JAMES: Off the record for a minute.

25 (A discussion was held off the record.)

1 CHAIRMAN BRENNAN: The Chair moves to reconsider
2 the previous vote on Commissioner Garcia's proposal. All
3 those in favor--Commissioner Coulter?

4 COMMISSIONER COULTER: Yes.

5 CHAIRMAN BRENNAN: Commissioner Burg?

6 COMMISSIONER BURG: Yes.

7 CHAIRMAN BRENNAN: Commissioner James?

8 COMMISSIONER JAMES: No.

9 CHAIRMAN BRENNAN: Commissioner Garcia?

10 COMMISSIONER GARCIA: No.

11 CHAIRMAN BRENNAN: The Chair votes aye. The
12 "ayes" are three; the "nays" are two. I now move that the
13 motion of Commissioner--yes.

14 COMMISSIONER GARCIA: Does Commissioner Burg's
15 vote count since she was not on the prevailing side--

16 CHAIRMAN BRENNAN: The Commissioner has a right
17 to vote, but not a right to offer the motion. I now move
18 that we amend Commissioner Garcia's proposal in the fashion
19 I previously indicated, in which the formula would be
20 applied to ascertain the amount of the payment based upon
21 the latest certified figures, which we are told are 1.24.

22 COMMISSIONER GARCIA: Approximately.

23 MR. SMITH: Just for a point of
24 information, my information based upon '77 is that formula
25 would yield between 1.4 and 1.5 million dollars.

1 COMMISSIONER GARCIA: That's '77?

2 MR. SMITH: Yes.

3 CHAIRMAN BRENNAN: The motion is to use the
4 figure certified for fiscal year 1976, which has been
5 estimated to produce 1.2 million dollars, subject to the
6 inflation adjustment. Is there any discussion on the
7 amendment?

8 COMMISSIONER JAMES: Yes. Would somebody--I
9 presume you, Mr. Chairman--explain to me the rationale and
10 how we're being fair and equitable to the little people
11 who are the members of ASCAP, I have to assume, by adopting
12 a formula or actually we're setting a flat rate, if I
13 understand your hypothetical, the question has now turned
14 to a motion. Aren't you using subdiffuge when you say that
15 you apply the revenue formula to come up with a flat rate,
16 and then apply the flat rate in your rule.

17 CHAIRMAN BRENNAN: All I am precluding is this
18 rate being adjusted until 1983, other than for the
19 inflation adjustment. We are using the revenue formula
20 to establish what would be a reasonable rate. But then
21 providing that it shall apply throughout the life of the
22 schedule.

23 COMMISSIONER JAMES: But, in essence, what you're
24 doing is going with a flat fee?

25 CHAIRMAN BRENNAN: A flat fee calculated on the

1 basis of revenue.

2 COMMISSIONER GARCIA: Mr. Chairman, the numbers
3 that we've been talking all along about 1976 are the
4 numbers that were in the 1977 status report for CPB,
5 those numbers are also preliminary numbers.. Those are the
6 same numbers that are now available for 1977 numbers. We
7 do have the certified number, as certified to the Treasury
8 made available to us. Mr. Smith, do you have any idea what
9 that number is?

10 MR. SMITH: The certified number is a non-federal
11 financial number. We have been trying in the last two
12 days for FY'77 to get the number you're reaching for.

13 COMMISSIONER GARCIA: What is it for 1976?

14 MR. SMITH: The total number?

15 COMMISSIONER GARCIA: Yes.

16 MR. SMITH: Well, the number we've gone with and
17 that you've gone with is for the total income is 412. No one
18 knows at this point exactly what the number is you're
19 reaching for, which is licensees, either plus or minus
20 networks non-duplicative.

21 COMMISSIONER GARCIA: My question is this, you're
22 satisfied with that 412 as being the final number for 1976?

23 MR. SMITH: For total system income including
24 production, houses and CPB as well?

25 COMMISSIONER GARCIA: Everything.

1 MR. SMITH: That 412 does not go to the
2 Treasury. That is a number created purely by CPB. I
3 can't tell you whether 412 is the final number. I believe
4 I'm correct in saying that as yet there is no final number
5 for FY'76. I think I mentioned before--I mean, it's
6 within that ballpark. But there are still auditing stations
7 to get to the--.

8 COMMISSIONER JAMES: Mr. Chairman.

9 CHAIRMAN BRENNAN: Commissioner James.

10 COMMISSIONER JAMES: As I understand your amendment
11 to Commissioner Garcia's motion, this is 1978 that you're
12 going to take a figure on 1976, total system-wide
13 revenue, is that my understanding?

14 CHAIRMAN BRENNAN: Yes.

15 COMMISSIONER JAMES: I'd like your legal opinion
16 on whether or not that complies, by using that total
17 system figure, does that comply with the mandate of the
18 statute, number one. And number two, does your amendment,
19 how do you allocate the payment down to how each entity is
20 to contribute to that overall?

21 CHAIRMAN BRENNAN: On the latter point--

22 COMMISSIONER JAMES: Because I think they're going
23 to have to go back and get all the budgets, and you plan
24 them on a total figure. And we're getting back to the
25 process that Commissioner Coulter was opposed to, that is

1 getting some complexity, because you have to take the
2 total budget, get a percentage of each station entity and
3 apply it against the total base. Now, you don't have a
4 problem with that now, I would imagine, Commissioner Coulter?

5 COMMISSIONER COULTER: It was part of one of my
6 proposals anyway.

7 CHAIRMAN BRENNAN: It's apparent that the motion
8 does have sufficient appeal.

9 COMMISSIONER COULTER: I thought we were just in
10 discussion.

11 CHAIRMAN BRENNAN: The Chair withdraws the motion.

12 COMMISSIONER JAMES: That leaves us again with
13 Commissioner Garcia's motion.

14 COMMISSIONER BURG: Mr. Chairman.

15 CHAIRMAN BRENNAN: Commissioner Burg.

16 COMMISSIONER BURG: Then I would like to offer
17 a motion that uses that 1.2 million to 1.224 million as
18 the flat fee and not based on revenue, would be the fee
19 payable to ASCAP, but not have it tied into revenue,
20 because we're getting into a situation where you can't
21 really determine--

22 COMMISSIONER JAMES: There's a motion on the floor.
23 Commissioner Garcia's motion, which was reconsidered is
24 now on the floor.

25 CHAIRMAN BRENNAN: Commissioner Burg can offer a

1 substitute.

2 COMMISSIONER BURG: That is, in effect, what I'm
3 doing.

4 CHAIRMAN BRENNAN: Commissioner Burg has offered
5 a substitute motion, the pending motion then is
6 Commissioner Burg's substitute. Any discussion on the
7 substitute?

8 (No verbal response.)

9 CHAIRMAN BRENNAN: We shall vote on Commissioner
10 Burg's substitute. Commissioner Coulter?

11 COMMISSIONER COULTER: No.

12 CHAIRMAN BRENNAN: Commissioner Burg?

13 COMMISSIONER BURG: Yes.

14 CHAIRMAN BRENNAN: Commissioner James?

15 COMMISSIONER JAMES: No.

16 CHAIRMAN BRENNAN: Commissioner Garcia?

17 COMMISSIONER GARCIA: No.

18 CHAIRMAN BRENNAN: The Chair votes no. "Ayes"
19 are one; "nays" are four. The question recurs now on
20 Commissioner Garcia's motion.

21 COMMISSIONER COULTER: I'd like to offer an
22 amendment to Commissioner Garcia's motion so we can
23 handle this question of figures. In other words, rather
24 than worry about the specific certification, since that
25 seems to cause complications, we simply use the currently

1 accepted 1976 figures that have been presented to us
2 during the entire course of this proceeding as the base.
3 Since no other figures have been presented to us to make
4 any decision, I would like to move that they be used, those
5 figures be used to establish the rate, using Commissioner
6 Garcia's revenue method, that that be fixed as you suggested.

7 COMMISSIONER JAMES: I'm sorry. What was the
8 last part?

9 COMMISSIONER COULTER: That that be fixed and be
10 the rate for the period of consideration.

11 COMMISSIONER JAMES: What period of consideration?

12 COMMISSIONER COULTER: The five-year period.

13 COMMISSIONER JAMES: Mr. Chairman, that's the
14 exact same vote that was just voted on.

15 COMMISSIONER COULTER: No, he said there was a
16 problem with certifying figures, and I said don't worry
17 about the certification. Just use the figures we've been
18 dealing with all along.

19 COMMISSIONER JAMES: Mr. Chairman, is that or is
20 that not your motion?

21 CHAIRMAN BRENNAN: My motion was withdrawn; it
22 wasn't voted on.

23 COMMISSIONER JAMES: Oh, okay.

24 CHAIRMAN BRENNAN: You've heard the motion of
25 Commissioner Coulter. Is there any further debate?

1 (No verbal response.)

2 CHAIRMAN BRENNAN: We shall vote on Commissioner
3 Coulter's motion. Commissioner Coulter?

4 COMMISSIONER COULTER: Yes.

5 COMMISSIONER BURG: Would you please state it again.

6 COMMISSIONER COULTER: It's to use the '76 figures
7 that have been presented to us during the course of these
8 proceedings, to apply to it the revenue formula that
9 Commissioner Garcia has produced, and set that as the rate
10 for the five-year period, with an inflation adjustment.

11 COMMISSIONER GARCIA: How often is the inflation
12 adjustment?

13 COMMISSIONER COULTER: Do we have to get into that
14 on this particular--

15 COMMISSIONER JAMES: Yes.

16 CHAIRMAN BRENNAN: It's provided already in our
17 general decision, that any flat rates would be open for
18 adjustment, January 1, 1981.

19 COMMISSIONER COULTER: Can we just open to
20 general inflation adjustment?

21 COMMISSIONER BURG: Is that the 412 million?
22 I mean, the base revenue figure, that would yield 1.224
23 million?

24 COMMISSIONER COULTER: I'm just including the
25 idea of the revenue base.

1 CHAIRMAN BRENNAN: We will vote now on
2 Commissioner Coulter's motion. Commissioner Coulter?

3 COMMISSIONER COULTER: Yes.

4 CHAIRMAN BRENNAN: Commissioner Burg?

5 COMMISSIONER BURG: Yes.

6 CHAIRMAN BRENNAN: Commissioner James?

7 COMMISSIONER JAMES: No.

8 CHAIRMAN BRENNAN: Commissioner Garcia?

9 COMMISSIONER GARCIA: No.

10 CHAIRMAN BRENNAN: The Chair votes aye. The
11 "ayes" are three; the "nays" are two. Commissioner
12 Coulter's motion is adopted.

13 COMMISSIONER JAMES: This was an amendment to her
14 motion?

15 CHAIRMAN BRENNAN: Yes.

16 COMMISSIONER JAMES: Now we've got to vote on
17 the motion as amended; right?

18 CHAIRMAN BRENNAN: That's correct. Is there any
19 further discussion on the motion which is now essentially
20 the Coulter substitute? Commissioner Coulter?

21 COMMISSIONER COULTER: No. Please, that was a
22 vote, my vote is yes.

23 CHAIRMAN BRENNAN: Commissioner Burg?

24 COMMISSIONER BURG: Yes.

25 CHAIRMAN BRENNAN: Commissioner James?

1 COMMISSIONER JAMES: No.

2 CHAIRMAN BRENNAN: Commissioner Garcia?

3 COMMISSIONER GARCIA: No.

4 CHAIRMAN BRENNAN: The Chair votes aye. The
5 motion as amended by the substitute has been adopted by a
6 vote of three "ayes", two "nays". Is there any further
7 action required in connection with the ASCAP formula at
8 this time?

9 (No response.)

10 CHAIRMAN BRENNAN: We have a request from the
11 counsel for SESAC, that he be given the opportunity to
12 comment on decisions tentatively taken at last week's
13 meeting. We have informed a representative of the
14 Intercollegiate Broadcasting Network of this request, and
15 we shall be also glad to hear such a representative. If
16 there is no objection, I will call upon Mr. Ciancimino.

17 MR. CIANCIMINO: Thank you, Mr. Chairman. It's
18 kind of difficult to ask this Tribunal to focus upon
19 figures which amount to approximately \$60 a year or \$20 a
20 year after just considering figures amounting from 1.2 to
21 1.5 million. And I think it might be going from the sublime
22 to the ridiculous. But I would ask the Tribunal to please
23 try to understand that the Tribunal's activity covers
24 large organizations as well as small organizations. And
25 each organization--regardless of size--has its own internal

1 problems and its own internal policies that it must follow.

2 Along these lines, I would call your attention
3 to last week's meeting, when the discussion for non-commercial
4 broadcast performing rates came up, there were two steps,
5 as I recall, that were discussed and voted upon by this
6 Tribunal. The first was a series of alternate approaches
7 as to how to divide whatever monies this Tribunal sets as
8 fees to be paid by college and unaffiliated stations two or
9 three organizations.

10 The second step was the discussion and adoption
11 tentatively of actual rates for college and unaffiliated
12 stations. Now, I would direct my remarks initially to the
13 first part.

14 As I recall, the first suggestion that was made
15 was to have a sum, a set sum which would then be divided
16 among the three performing rights organizations in a
17 certain proportion. And as I recall, initially, Commissioner
18 James suggested that in light of the nominal amounts involved
19 that the monies be proportioned equally, which would have
20 meant that ASCAP, BMI and SESAC each would have received
21 one-third of whatever the rate would be for both college and
22 unaffiliated stations.

23 That was defeated as Commissioner Coulter then
24 suggested a 40-40-20 formula for distribution of these fees.
25 That also was defeated, and it seems like the further down

1 along the table we went, the dimmer SESAC's future became
2 in this area. The final proposed proportion which was
3 adopted, I think officially it was Commissioner Burg's
4 motion. But I think Commissioner Brennan also indicated
5 the preliminary tendency towards that percentage split, was
6 the 45-45-10 split, which would give 10 percent to SESAC.

7 Now, I ask as an advocate strictly and not
8 speaking for performing rights in general, but as an
9 advocate for SESAC, I ask that this Tribunal consider in
10 light of the rates that were later set, and I remind you
11 that tentatively there are \$400 for unaffiliated stations
12 and \$200 for college stations, and the unaffiliated area,
13 there's a 20-watt cut-off, so that only those unaffiliated
14 stations over 20 watts would be paying the \$400. I'll get
15 to that particular issue in a few moments.

16 But as to the division and as to how it applies
17 to SESAC, I would ask this Tribunal to consider that it's
18 my understanding that Section 118 and Congress in enacting
19 that section wish to encourage the voluntary licensing of
20 Public Broadcast entities. And I think the language of
21 118 indicates as much insofar as such agreements voluntarily
22 negotiated are explicitly given precedence over any rates
23 set by the Tribunal.

24 SESAC did try to comply with the intent of
25 Congress; I believe we were the only one of the three

1 organizations that did initiate immediate licensing
2 proposals to the unaffiliated and collegiate stations
3 not covered by our general license with Mr. Steinbach's
4 group. We have been quite successful, I would submit, in
5 negotiating some 85 licenses based on the rate schedule
6 which we have submitted to the Tribunal, which runs from
7 \$60 as a minimum to \$180 as a maximum.

8 And I have for inspection produced copies of
9 these licenses, so that the Tribunal can readily ascertain
10 that this spread is not entirely in the lower element,
11 it's spread right through the rate schedule. And there are
12 \$180 license, \$150 licenses, \$100 licenses, as well as
13 \$60 and \$90 licenses. I submit to the Tribunal that a
14 ten percent fee to SESAC, based on the current amounts
15 set, which would be \$20 to collegiate stations would render
16 our prior efforts at negotiating voluntary agreements with
17 almost half of the stations licensable, would render them
18 completely useless because I don't see how SESAC could
19 maintain a rate with a college station or an unaffiliated
20 station that has voluntarily signed an agreement based
21 on our rate schedule.

22 How can we voluntarily maintain that in effect
23 when the Tribunal is, other the other hand, saying to us
24 that we must now offer other stations, possibly exactly
25 the same as nomenclature, a license for \$20.

1 I would submit also that the \$20 rate, in effect,
2 makes college stations unlicensable so far as SESAC is
3 concerned. We are dealing here with a deminima (ph)
4 situation. For us to send out a license to a station
5 that contains a \$20 fee, and for us to handle that license
6 when it comes back if it's signed, or if it's not signed
7 to follow up and see that it is signed, so that the law
8 is complied with. I suggest to you that this effort on the
9 part of SESAC would leave extremely little for the affiliate
10 to have as a royalty fee.

11 With regard to the unaffiliated stations, the
12 ten percent to SESAC would yield \$40 for each of the
13 unaffiliated stations, which doesn't even come to the
14 minimum rate that has been complied with, with almost
15 half of the stations that we've negotiated with. And I
16 would say to this Tribunal that the decisions taken last
17 week should be reconsidered so that the voluntary license
18 agreements are allowed to stand, and not just by language of
19 the Tribunal which says that they will, in effect, adopt
20 these agreements, because as a practical matter, SESAC
21 cannot live with a grievance that are so far out of line
22 with a \$40 fee set by the Tribunal. But that the Tribunal
23 consider a split which would at least bring SESAC's
24 percentage within the rate schedule.

25 I would submit to this Tribunal that a 40-40-20

1 split, which would allow SESAC \$80 on a \$400 total
2 license fee to an unaffiliated station would do just that.
3 And I would ask that the Tribunal reconsider Commissioner
4 Coulter's prior motion and adopt a 40-40-20 split in this
5 area.

6 And I am further advised that there will be
7 language in the Tribunal's regulation that specify that
8 any split agreed to by the Tribunal will not be binding
9 upon the Tribunal insofar as any future determination of
10 distribution of monies in other areas is concerned. And I
11 have no difficulty with that language whatsoever.

12 Now, Mr. Chairman, shall I go on to my second
13 point or--?

14 CHAIRMAN BRENNAN: Yes, I believe so.

15 MR. CIANCIMINO: The second point is the
16 distribution for the setting of fees on the basis of
17 \$400 for unaffiliated stations and \$200 for college
18 stations. And the inclusion of the 20-watt cut-off just
19 for the unaffiliated stations. I would suggest to the
20 Tribunal that there is no justification in my mind for the
21 20-watt cut-off applying only to the unaffiliated stations.

22 In fact, it would seem to me that if a list of
23 non-commercial stations were to be compiled, and if this
24 list were to indicate the larger, more well-budgeted, the
25 better off, independent and college stations insofar as

1 finances are concerned, that you would find toward the
2 the top of that list in the main your larger college and
3 university stations, and not your independent or smaller
4 religious stations. And to have a rate which would cause
5 such a large college station to pay half of what an
6 independent station pays, to me seems to be most inequitable.

7 I would suggest that the 20-watt cut-off be
8 applied, not only to the independent, unaffiliated stations,
9 but also to the college stations as well, so that all
10 non-commercial stations over the 20-watt cut-off would
11 pay the \$400 rate. Those would be my two suggestions to
12 this Tribunal. Thank you.

13 CHAIRMAN BRENNAN: Mr. Tellis, do you wish to--

14 MR. TELLIS: Yes, I do.

15 We've got a couple of different points, as
16 Mr. Ciancimino has raised. First of all, the issue of the
17 voluntary license agreements that are signed already that
18 Mr. Ciancimino referred to, the 85 voluntary licenses
19 that were signed. A quick check on those seem to indicate
20 that the majority are religious affiliated schools and
21 stations, they're involved in those. And by an informal
22 survey, it would appear that most of those agreements were
23 signed by station people that were unaware that this issue
24 was still before the Tribunal as far as setting rates.

25 I cannot see why someone would sign an agreement

1 for \$180 when the Tribunal was considering a rate that
2 was significantly lower, and the station had nothing to
3 loose by waiting until the Tribunal made its decision. So,
4 for that reason alone, it would seem that most of the sta-
5 tions would sign, if not all. And certainly most would have
6 signed out of an unawareness of that.

7 So, I don't consider the agreements that have
8 been signed as a valid precedent for consideration by the
9 members of the Commission in the sense that I think they
10 were signed by people who were not totally informed of the
11 situation, or else I don't think they would have signed it.

12 The college stations budgets are significantly
13 lower than most of the unaffiliated stations. You will
14 find that the differential is warranted in the case of
15 college stations. The \$200 figure for higher than ten-watt
16 stations is not an unreasonable figure. But 400 becomes
17 very unreasonable. The one thing that we had strong
18 objection to about the rate structure was that under this,
19 a ten-watt college station would have to pay the same
20 figures as a higher powered college station, in the case
21 particular with ASCAP, where no radio is included under
22 the per student fee.

23 In the case of BMI and SESAC, the smaller class d,
24 ten-watt type stations are both included in the per student
25 fees that the colleges are already paying under a separate

1 agreement. In the case of ASCAP, that is not true. So,
2 they would have to pay the same rate. Our proposal is that
3 class d, ten-watt stations, which are the little people,
4 which are the poor stations, and they also happen to be
5 the majority of non-commercial radio licensees.

6 They don't have the high-priced counsel organiza-
7 tions representing them that the more affluent groups do,
8 but they are the small people and they cannot afford these
9 kinds of rates. We would propose that for non-college
10 ten-watt stations, that the rate be half those proposed
11 for the college stations. That would put that more in
12 line because we feel that particularly the ten-watters
13 would be burdened with this kind of situation. But we
14 feel anything more than the proposed \$200 limit, even the
15 \$200 limit is straining things a bit for most of the
16 stations. Anything beyond that would certainly be very
17 difficult to carry.

18 I think also in considering the college stations,
19 one of the differential reasons here between the two
20 different rates for unaffiliated and college stations is
21 the fact that colleges have already reached separate
22 agreements with the licensing organization for other
23 music uses, which would include on campus music, and is
24 part of the reason the rates were negotiated in particularly
25 two out of three cases, because they included the smaller

1 college radio stations. So, there is a basis for
2 differential in the rates.

3 We don't believe that the rates that are adopted,
4 that are proposed would be a detriment to the people at
5 NPR or at CPB. As far as college stations go, in the
6 sense that the budget figures, since they're going to be
7 based on revenue, the budget figure for a typical NPR
8 station would run about 100,000 or so; whereas with an
9 over ten-watt college station, you're talking about maybe
10 20,000 tops. So, you're talking about a five to one
11 ratio.

12 And the figure based on the calculations
13 that were done are about a three to one ratio on a fee
14 for those budgetary figures. So, no, it is not out of
15 line and we don't believe it would discourage--certainly
16 we would not like to see the college stations suffer with
17 anymore of a burden than what's already been proposed.

18 Mr. Steinbach, do you wish to speak?

19 MR. STEINBACH: Not at this time.

20 MR. CIANCIMINO: Just one or two points,
21 Mr. Chairman. SESAC has kept the Tribunal well informed
22 as to the number and rate upon which licenses have been
23 received. I would submit that the rate of reception of
24 licenses from these stations have been fairly steady. And
25 they have been received as recently as last week.

1 I guess the point I'm trying to make is that
2 if these stations have not been informed to date of what
3 their rights are, what their options are, I would suggest
4 that perhaps the representatives at this table have not done
5 a very good job of informing them. But I would suggest to
6 this Tribunal that these stations are advised and do
7 understand the situation, and did receive letters from
8 SESAC, and felt in the main-- When I say they felt, I'm
9 talking about 43 percent I believe, which is a fairly high
10 percentage, felt that the rates suggested by SESAC were
11 fair and reasonable. And this is the reason that they would
12 sign, and that there was no ignorance on their part of
13 substance that would explain the high rate of signees.
14 Thank you.

15 MR. STEINBACH: Mr. Chairman, I'd like to
16 respond to that on behalf of our colleges. I don't know
17 where these schools have come from who have signed these
18 licenses. I assume that among them, there are several of
19 them that belong to our organization, which is the major
20 umbrella organization in higher education. Yet, we only
21 represent 1,300 colleges out of an estimated 3,000,
22 including from the initial letters that I saw from
23 Mr. Ciancimino as to the schools that had signed, which
24 at that time was somewhere in the neighborhood of 30 to 40,
25 there were just one or two or three of ours.

1 I think those are readily explainable by the
2 diverse nature of our institutions and that the licenses
3 went to the radio stations in many instances and somebody
4 signed off on them without clearing it further up the line.
5 I have not checked those things specifically.

6 But I think overwhelmingly of the number of
7 institutions that are members of our organization who
8 have received a broad based, detail, 23 page document, out-
9 lining the nature of our agreement, they have accordingly
10 with good common sense, held off signing any of the SESAC
11 agreements pending determination here. I find the evidence
12 here, my way of thinking, to be very--not be particularly
13 persuasive whatsoever as to the acceptability. If anything,
14 it is to the gullibility of some people, some institutions
15 who are otherwise uninformed or otherwise been misled.

16 CHAIRMAN BRENNAN: Are there any motions on the
17 part of Commissioners?

18 COMMISSIONER COULTER: I felt that since the
19 question of the inflation adjustment came up and was left
20 unresolved as a result of our last series of votes, that
21 sense this is a public meeting, we obviously should resolve
22 that question here. And I'm prepared, Commissioner Garcia,
23 in the case of the ASCAP rate to have the inflation
24 adjustment every year. I would like to make that motion.

25 CHAIRMAN BRENNAN: Perhaps we can first dispose

1 of the college and unaffiliated stations.

2 COMMISSIONER COULTER: I'm sorry.

3 CHAIRMAN BRENNAN: Are there any motions on that?

4 COMMISSIONER JAMES: No.

5 CHAIRMAN BRENNAN: Does any Commissioner desire to
6 reconsider previous actions?

7 COMMISSIONER JAMES: I voted no, so I can't do it.

8 CHAIRMAN BRENNAN: There are no motions forthcoming,
9 and I give--

10 COMMISSIONER GARCIA: Mr. Chairman, in lieu of
11 NPR's concern that we would perhaps discourage membership
12 in their organization by discriminating against their
13 members, and overall I appreciate that there has been a
14 ceiling placed on the original formula. I think in all
15 due respect to what we have here, I'm going to deviate a
16 little but, as a privilege offered a commissioner and say
17 this to my fellow Commissioners: I appreciate that there was
18 some concern as to what the total revenue formula originally
19 proposed by me would render.

20 And one of the Commissioners expressed the sums
21 were too high. I just want to put this in the proper
22 perspective. The sums that we were talking about would
23 have never exceeded three-tenths--or I should say three-
24 thirty ones of a tenth of the PBS and NPR and the other
25 performing public broadcasting entities. And the amount that

1 we were also talking about that would be rendered to
2 ASCAP, we're talking about approximately one percent of
3 the gross revenue. So, I think I'd feel a lot happier
4 if the Commissioners would just keep that big picture in
5 mind. While it sounds like it's a lot of money, the 1.2
6 million, I just wanted to put that into perspective for you,
7 that in any million dollar increase in PBS and all other
8 Public Broadcasting entities, we were talking about
9 \$3,100.

10 Now, having put that to rest, and with the
11 concern I have with the NPR stations, and at this time our
12 fee will, even though there has been a ceiling, my formula
13 will probably average to a thousand dollars for each
14 station. I certainly do not think that this is equitable
15 that NPR should be punished that way. And therefore, I
16 make a motion that the non-affiliated stations and
17 college stations also be subjected to the same formula,
18 not to exceed a thousand dollars per station.

19 Therefore, Mr. Chairman, the effective rate would
20 be .88 for radio. That would mean .4 for ASCAP, .4 for
21 BMI and .08 for SESAC, which would be in keeping with the
22 original breakdown of Commissioner Burg, 45 percent and
23 ten percent.

24 CHAIRMAN BRENNAN: Calculated on which revenue,
25 Commissioner?

1 COMMISSIONER GARCIA: Okay. For the non-
2 affiliated stations, it would be on their total budget.
3 For the college stations, I appreciate that we have a
4 unique animal there, and that the licenses are issued to
5 the university. So, it would only be the budget allocated
6 to the radio stations.

7 And Mr. Chairman, at this time, I have no idea--
8 I'll save a question--as to how much revenue that would
9 produce.

10 COMMISSIONER JAMES: Can we have a flat rate,
11 as most of the Commissioners appear to want, instead of
12 going with a fee based on revenue. Because as I understand,
13 the majority of the Tribunal now has opted for a formula
14 based on revenue. But are applying for the five-year
15 period, a flat dollar amount. Is that my correct
16 understanding?

17 So, asking Commissioner Garcia, wouldn't it
18 be better just to continue with, instead of going back
19 to the formula, a flat rate, just increase the rate. And
20 my amendment would be to raise unaffiliated up to a
21 thousand dollars and leave the colleges and universities
22 as is.

23 COMMISSIONER GARCIA: Commissioner James, if we
24 could read back the record, I think that is the intention
25 of my motion. It was not to exceed a thousand dollars.

1 Perhaps I should have added for the next five years, with
2 the exception of whatever it--

3 COMMISSIONER JAMES: No, I think that's what
4 your motion did. But I'm just defining a little better.
5 Let's just pick the dollar figure instead of having to go
6 through the gymnastics of figuring out what the revenues
7 of a college station might be, because I'm sure they get a
8 lot of ancillary revenue and support from other department
9 budgets. And it's going to be almost impossible to
10 ascertain what an individual college radio budget is on an
11 exact dollar.

12 Ohio State budget, for the total university is
13 something like four and a half feet high. And there are
14 things that are contributed by the medical school, you
15 know, their telecommunications center--it's just impossible.
16 I know just by one university, you can't do it.

17 COMMISSIONER GARCIA: Do we have a motion on
18 the floor?

19 COMMISSIONER JAMES: I've got an amendment to
20 your motion. Does the Chairman understand my amendment?
21 I will repeat it over.

22 CHAIRMAN BRENNAN: Yes, I would think Commissioner
23 ought to offer a text.

24 COMMISSIONER JAMES: I'm just taking what you
25 basically already approved, what's in this document here.

1 I'm just raising leaving colleges alone, and raising
2 on -- 306 can stay the same. Let's see if I got it right,
3 304.6 would stay the same, Mr. Chairman because NPR, which
4 is Commissioner Garcia's concern, is not pertained in 304.6.
5 304.7, which is the Public Broadcasting, or NPR's concern
6 would be the one I suggest the dollar amount be raised.
7 Use the same language, just raise the amount.

8 CHAIRMAN BRENNAN: And the amount would be?

9 COMMISSIONER JAMES: I think I'm the wrong one to
10 put the amount because I didn't really support this motion
11 anyway. But I'm saying for simplification, rather than
12 go back to that formula--

13 COMMISSIONER GARCIA: Is that my motion you're
14 amending, I beg your--

15 (General laughter.)

16 COMMISSIONER GARCIA: You're in good shape,
17 Commissioner James.

18 COMMISSIONER JAMES: Okay. Let's make it a
19 couple thousand dollars under the same procedure that you
20 have.

21 CHAIRMAN BRENNAN: Some of the Commissioners
22 were occupied, so would you state your motion?

23 COMMISSIONER JAMES: My motion is to leave
24 Section 304.6 as it is now constituted, as drafted by
25 the Chairman, in tact; and that we amend 304.7, leaving the

1 language as is, parts one and two to reflect the maximum
2 dollar split-up of \$1,000.

3 CHAIRMAN BRENNAN: Is there any discussion?

4 MR. CIANCIMINO: Just a point of clarity on
5 my part. I don't know if I'm out of order. But
6 Commissioner James said a maximum of a thousand dollars. I
7 had understood his original proposal to be a flat \$1,000.

8 COMMISSIONER JAMES: The 400 is going to a thou-
9 sand.

10 MR. CIANCIMINO: But it's not a maximum, it's
11 just a flat rate--

12 COMMISSIONER JAMES: Flat rate, I'm sorry. Did
13 I say maximum?

14 MR. CIANCIMINO: Yes.

15 COMMISSIONER JAMES: I stand correct. May the
16 record so indicate that I meant flat.

17 CHAIRMAN BRENNAN: Is there any further discussion?
18 (No verbal comment.)

19 CHAIRMAN BRENNAN: We will vote on Commissioner
20 James' amendment. Commissioner Coulter?

21 COMMISSIONER COULTER: No.

22 CHAIRMAN BRENNAN: Commissioner Burg?

23 COMMISSIONER BURG: No.

24 CHAIRMAN BRENNAN: Commissioner James?

25 COMMISSIONER JAMES: Yes.

1 CHAIRMAN BRENNAN: Commissioner Garcia?

2 COMMISSIONER GARCIA: Yes.

3 CHAIRMAN BRENNAN: The Chair votes yes. There
4 are three "ayes" and two "nays". The amendment is adopted.
5 Commissioner Garcia's motion has been modified. Can we
6 take it that the modified motion has been adopted?

7 COMMISSIONER JAMES: You can, Mr. Chairman.

8 CHAIRMAN BRENNAN: So agreed.

9 Are there any further matters to come before this
10 meeting?

11 MR. STEINBACH: Mr. Chairman, just a point of
12 clarification on our part. Do we understand that on
13 behalf of the colleges that there is a flat rate of
14 \$200 as proposed originally and that will be calculated
15 based on the percentages outlined by Commissioner Garcia?

16 CHAIRMAN BRENNAN: That's correct.

17 MR. KORMAN: I understood that Commissioner
18 Coulter had a motion about to be made concerning the
19 inflation adjustment. And in trying to answer not at
20 two hour length as Mr. Clemton did at Cambridge, I did
21 not mention all as you invited me to do, objections to
22 the hypothetical which has now been adopted. So, I
23 suppose I ought not to go on in any great length. I would
24 like to say that the rate of growth, 1977 or 1976 was about
25 15 percent. I understand the number for 1977--

1 CHAIRMAN BRENNAN: Mr. Korman, actually you have
2 no right to be heard. And there is objection. Is there
3 any further business before this meeting?

4 (No response.)

5 CHAIRMAN BRENNAN: We will recess until 4 o'clock
6 tomorrow afternoon.

7 (Whereupon, the meeting was recessed at the
8 call of the Chair at 4:30, p.m.)
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